



April 21, 2017

The Honorable Ajit Pai
Chairman
Federal Communications Commission
445 12th St SW
Washington, DC 20536

Re: Streamlining Deployment of Small Cell Infrastructure by Improving Wireless Facilities; Mobilitie, LLC
Petition for Declaratory Ruling (WT Docket No. 16-421)

Dear Chairman Pai:

As President of the Forum for Community Leaders (FCL), an organization responsible for educating our citizens, industry leaders and elected officials at all levels of government and across the country, a top priority is to attract investment and encourage growth and innovation in our cities in order to ensure that our cities and citizens are well positioned for the future. In 2017, as you have recognized, that means embracing opportunities for “digital empowerment” by encouraging broadband providers to deploy world-class networks and services so that our citizens can fully participate in today’s digital economy.

Increased access to the Internet is not, however, a goal that any city can reasonably pursue to the exclusion of all other priorities. We have many important responsibilities to our constituents. Among these are duties to protect our citizens’ property values, to preserve the aesthetic quality of their neighborhoods and business districts, and to ensure that their streets and highways remain safe. In the event a company seeks to install large, unsightly, or dangerous facilities in the rights of way owned and managed by our local governments for the benefit of our citizens, concerns must be taken seriously. After all, local governments in general, and mayors more than others, are first and foremost accountable to their citizens, and it is to local elected officials like us whom citizens turn when new developments in their communities attract their attention or raise their concern.

We want to work constructively with the FCC and Internet service providers to encourage broadband deployment, and we recognize that technological realities associated with the next generation of wireless broadband may demand new facilities, like small cells. We nonetheless are concerned that Mobilitie’s Petition for Declaratory Ruling and the Public Notice issued by the FCC in December represent the first step down a path that could lead to the trampling of legitimate local rights and prerogatives based on questionable facts and a skewed framing of the relevant law.

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Our cities have had success working with Internet service providers who appreciate our many and often competing policy priorities and are accordingly willing to devote modest resources to addressing common-sense concerns. At the same time, the sometimes aggressive tactics of companies proposing controversial new installations – in quiet residential neighborhoods, in carefully preserved historic districts, or dangerously close to busy roadways – can result in delays that have nothing to do with intransigence on the part of local governments. We understand that the record of this proceeding includes many examples of questionable or high-handed tactics by wireless providers or their agents to gain access to rights of way, at times creating eyesores – or worse – in public spaces.

What's more, we do not think the law in this area necessarily allows the sort of federal interference with local authority that Mobilitie and other parties have proposed. In its very first sentence, Mobilitie's Petition betrays a misreading of the Communications Act by asking that Section 253 be applied to prevent localities from seeking appropriate compensation for access to and use of city property for *wireless* equipment.¹ The FCC has never done that before, and no wonder: The Act quite clearly establishes that only Section 332(c)(7) may be used to limit local government authority over the siting of new wireless facilities.² Attempting to shoehorn an interpretation of Section 253 terms like "fair and reasonable compensation" into the wireless facility siting context would be a surprising approach for an FCC Chairman who has pledged to "ensure that as the agency seeks to deliver digital opportunity to every American, it does so consistent with the expressed will of Congress."³

This is not to say the FCC should do nothing. In your short time as Chairman, you already have made several broadband deployment proposals that hold great promise. For example, you have taken steps to convene a Broadband Deployment Advisory Council with the aim of developing a "model code" that would enable localities to leverage the experience of local elected officials and industry with their own expertise as to their geographies and the priorities of citizens who reside there. We commend this effort to facilitate homegrown solutions working from federal guidelines.

We look forward to continued collaboration with you, your colleague Commissioners, and your staff at the FCC as we work toward our shared goal of deploying more and faster broadband to the communities that need it now more than ever.

Sincerely,



Timothy J. Barnes

President, Forum for Community Leaders

Paid for by the Forum for Community Leaders. The Forum of Community Leaders (FCL) is a non-profit organization pursuant to Section 501(c)(4) of the United States Internal Revenue Code.

¹ Mobilitie, LLC Petition for Declaratory Ruling, *Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way*, at 1 (filed Nov. 15, 2016).

² 47 U.S.C. § 332(c)(7)(A) ("Except as provided in this paragraph, nothing in this chapter shall limit or affect the authority of a State or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.").

³ Press Release: FCC Chairman Ajit Pai Appoints Acting General Counsel, FCC, Jan. 24, 2017, https://apps.fcc.gov/edocs_public/attachmatch/DOC-343156A1.pdf.